

1991

# The State of Utah v. William L. Forsyth : Petition for Rehearing

Utah Supreme Court

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Steven L. Grow; Grow & Musselman; Attorney for Appellant.

Robert Hansen; Attorney General; Noall T. Wootton; Utah County Attorney; Attorneys for Respondent.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff and Respondent, :

vs. : Case No. 14586

WILLIAM L. FORSYTH,

Defendant and Appellant.

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APPELLANT'S PETITION FOR REHEARING

Appeal from the Judgment, Sentence and Denial of  
Motion to Withdraw Plea as entered by the Fourth Judicial  
District Court for Utah County, Honorable J. Robert Bullock,  
Judge.

---

Steven L. Grow,  
Attorney for Appellant  
1325 South 800 East  
Suite 310  
Orem, Utah 84057

Robert Hansen  
Attorney General, State of Utah  
State Capitol Building  
Salt Lake City, Utah  
Attorney for Respondent

Noall T. Wootton  
Utah County Attorney  
Utah County Building  
Provo, Utah 84601  
Attorney for Respondent

FILED

MAR - 3 1977

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Clerk, Supreme Court, Utah

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Attorney for Appellant  
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Robert Hansen  
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State Capitol Building  
Salt Lake City, Utah  
Attorney for Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff and  
Respondent,

-vs-

WILLIAM FORSYTH,

Defendant and  
Appellant.

:

PETITION FOR REHEARING

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Case No. 14,586

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COMES NOW the above named Defendant-Appellant, by and through his attorney, Steven L. Grow, and moves the Court pursuant to Rule 77(e), Utah Rules of Civil Procedure, for a rehearing of the above entitled appeal from an order denying Defendant's motion to withdraw his plea of guilty. Argument on this case was originally heard by the Court on December 15, 1976 and the Court's decision affirming the lower Court was filed February 3, 1977.

This motion is based upon the grounds that the Court has apparently not recognized in its deliberations the fact that the Defendant had only approximately five to ten minutes to discuss with his attorney the nature and consequences of his plea of guilty prior to having such plea accepted by the Court, and the fact that Defendant made reasonable efforts shortly after entering the plea to advise the Court and its agents that he believed himself not guilty and desired to

withdraw the plea of guilty, and further the fact that according to the prosecutor himself no prejudice would result to the case if the plea were withdrawn and the matter were allowed to proceed to trial.

More particularly the transcript of the hearing of February 27, 1976 and defendant's affidavit set forth that at all times prior to arriving at the Court House, being just moments before he was scheduled to enter his plea, the Defendant had been led to believe by his counsel that he would be allowed to enter a plea of no contest or nolo contendere. It was only upon arriving for the hearing that he was told by his attorney that the agreement worked out with the prosecutor provided that he would enter a plea of guilty. There was not sufficient time for the Defendant to understand and weigh the alternatives associated with entering such a plea. The fact that Defendant originally represented to the Court to be entering his plea of guilty for "some other reason" indicated his confusion and lack of understanding of the situation. The evidence does not support the finding of the Court that the Defendant understood the alternatives he had and freely and voluntarily chose to enter the plea of guilty with a clear understanding of the charge and without undue influence, coercion or improper inducement.

The transcript of February 27th and Defendant's affidavit also indicate that after being sent out into

the hall by the Court to review with his attorney the reasons why he was entering the plea of guilty that the prosecutor himself in front of the Defendant at that sensitive point of the proceedings stated that he would face a "red-necked" jury if he didn't follow through with the stipulated agreement for the plea. His attorney also again advised him that there was no way that he could properly prepare the case of the Defendant by the scheduled trial date, that the judge would not grant a further continuance and that he should proceed with the plea of guilty. Such inducements and influence of counsel left the Defendant with little alternative but to return to the Court and simply unthinkingly give the answers he had been instructed to give to the inquiries of the Judge.

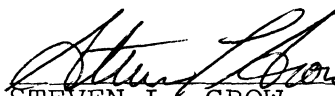
Furthermore, the fact that Defendant refused to cooperate with the Department of Adult Probation and Parole as the agent of the Court in making a statement or admission of guilt effectively put the Court on notice shortly after entry of plea on January 31 that the Defendant did not believe himself to be guilty and had entered his plea out of confusion and misunderstanding. It was only after the confinement of the Defendant for contempt of Court for failure to cooperate in the preparation of a pre-sentence investigation that Defendant even acquiesced into providing the Adult Probation Department with the basic information they were requesting. At all times he continued to profess his innocence and desire to withdraw his plea.

The transcript of the hearing of March 22, 1976 indicates that after inquiry by the Court that the prosecution for the State indicated that if the Court were to grant a new trial that the delay in time would not significantly prejudice the State's case.

It is in consideration of these facts and the concern of the Defendant that the Supreme Court of Utah did not fully understand or appreciate the same and apply the law in light of them that a rehearing is requested.

DATED this 23rd day of February, 1977.

RESPECTFULLY SUBMITTED:

  
STEVEN L. GROW  
Attorney for Defendant/Appellant  
1325 South 800 East, Suite 310  
Orem, Utah 84057  
Telephone: (801) 225-8300

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Petition for Rehearing to Earl F. Dorius, Assistant Attorney General, Attorney for Respondent, 236 State Capitol, Salt Lake City, Utah 84114, in a postage prepaid envelope, this 3<sup>rd</sup> day of March, 1977.

